B4

U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: Texas Service Center Date:

IN RE: Petitioner: [redacted]
Beneficiary:

SEP 26 2000

Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(C)

IN BEHALF OF PETITIONER:

[redacted]ublic Copy Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a Texas corporation that claims to be engaged in import and export trade and the restaurant business. The petitioner further claims to be a subsidiary of [redacted] located in the People's Republic of China. The petitioner seeks to classify the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C), to serve as the general manager. The director determined that the petitioner had not established that a qualifying relationship exists between the petitioner and the claimed parent company.

On appeal, counsel argues that the beneficiary is eligible for the benefit sought.

Section 203(b) of the Act states, in pertinent part:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> * * *
>
> (C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

At issue in the director's decision is whether a qualifying relationship exists between the petitioner and the claimed parent company.

8 C.F.R. 204.5(j)(2) states in pertinent part:

> *Affiliate* means:
>
> (A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;
>
> (B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and

controlling approximately the same share or proportion of each entity;

Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

The visa classification that the petitioner seeks is intended for multinational executives and managers. The language of the statute specifically limits this visa classification to those executives and managers who have previously worked abroad for at least one year in the preceding three for the overseas entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary. In order to qualify for this visa classification, the petitioner must establish that there is a qualifying relationship between the United States and foreign entities, in that the petitioning company is the same employer or an affiliate or subsidiary of the overseas company.

In a letter dated May 27, 1998, the petitioner stated that "sixty percent of the outstanding stock of Eastern was issued to [redacted] and is 100 percent wholly controlled by the parent corporation [redacted] The petitioner submitted a photocopy of its articles of incorporation which indicated that it has the authority to issue one million shares. The petitioner also submitted a "board resolution" dated January 5, 1996, which indicated that [redacted] s hereby directed to issue 15,000 shares of stock to [redacted] This issuance of stock represents 60 percent ownership in [redacted] by [redacted] The petitioner also submitted a photocopy of a "unanimous written consent of shareholders of [redacted] dated January 5, 1996, which indicated that the shares were distributed as follows:

[redacted]	5,000
	2,500
	2,500
	15,000

The information concerning the foreign-owned company was hand-written at the bottom of the document. Photocopies of stock certificates reflecting these values were also submitted.

On August 27, 1998, the director requested that the petitioner submit additional information. In response, the petitioner

submitted a "unanimous written consent of shareholders of [redacted] dated January 5, 1996, which indicated that the shares were distributed as follows:

[redacted]	5,000
	2,500
	2,500

The petitioner also submitted a hand-written explanation of stock transfers, as well as photocopied certificates that relate to these transfers.

On appeal, counsel describes the previously-submitted documents and states that [redacted] owns sixty percent of the petitioner's stock. The evidence submitted does not establish that a qualifying relationship exists between [redacted] The petitioner claims that [redacted] received 15,000 shares of the petitioner's stock. The petitioner further claims that it has not issued more than 25,000 shares of its one million shares of stock. The petitioner did not, however, submit any independent, documentary evidence to support these statements. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Accordingly, the petition may not be approved.

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary has been or will be employed in an executive or managerial capacity as defined at 8 C.F.R. 204.5(j)(2). As the appeal will be dismissed on the ground discussed, this issue need not be examined further.

The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.